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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE DISTRICT OF ARIZONA  
17

18 19 Don Lavetter, 20 Plaintiff, 21 vs. 22 USOnline.com d/b/a Sudden Values; and 23 DOES 1-10, inclusive, 24 Defendants. 25 26	Case No.:  <b>COMPLAINT</b>  <b>JURY TRIAL DEMANDED</b>
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For this Complaint, the Plaintiff, Don Lavetter, by undersigned counsel, states as follows:

## **JURISDICTION**

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that defendants transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

4. The Plaintiff, Don Lavetter (hereafter "Plaintiff"), is an adult individual residing in Tucson, Arizona, and is a "person" as defined by 47 U.S.C. § 153(10).

5. The Defendant, USOnline.com d/b/a Sudden Values (hereafter "Defendant"), is a Washington company with an address of 2900 Euclid Avenue, Suite A8, Wenatchee, Washington 98801, and is a "person" as defined by 47 U.S.C. § 153(10).

## FACTS

6. Beginning in or around November 2012, Defendant began contacting Plaintiff by sending text messages to Plaintiff's cellular telephone.

1 7. At all times mentioned herein, Defendant contacted Plaintiff on his cellular  
2 telephone using an automated telephone dialing system (“ATDS”) and/or by using  
3 artificial messages.  
4

5 8. Each of Defendant’s text messages contained an advertisement for weekly  
6 specials at a restaurant.  
7

8 9. Out of frustration, Plaintiff followed Defendant’s instructions contained in the  
9 text messages to be removed from its messaging system by texting “STOP” to  
10 Defendant.  
11

12 10. Plaintiff also followed Defendant’s instructions on its website to be removed  
13 from the text message list.  
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15 11. Despite Plaintiff’s efforts, however, Defendant continued to send text messages  
16 to Plaintiff’s cellular telephone.  
17

18 **A. Plaintiff Suffered Actual Damages**

19 12. The Plaintiff has suffered and continues to suffer actual damages as a result of  
20 the Defendants’ unlawful conduct.  
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22 13. As a direct consequence of the Defendants’ acts, practices and conduct, the  
23 Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional  
24 distress, fear, frustration and embarrassment.  
25

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27  
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1                   **COUNT I**

2                   **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**

3

4                   **47 U.S.C. § 227, et seq.**

5       14. The Plaintiff incorporates by reference all of the above paragraphs of this  
6       Complaint as though fully stated herein.

7

8       15. Defendants contacted Plaintiff on his cellular telephone using an automatic  
9       telephone dialing system (“ATDS”) and/or by using artificial messages in violation of  
10      47 U.S.C. § 227(b)(1)(A)(iii).

11

12      16. Plaintiff either never provided express consent to Defendants to message his  
13       cellular telephone number, or Plaintiff revoked his consent to be contacted by  
14       Defendants on his cellular telephone by his repeated demands to cease messaging his  
15       cellular telephone.

16

17      17. The messages from Defendants to Plaintiff were not placed for “emergency  
18       purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19

20      18. Each of the aforementioned messages sent by Defendants constitutes a  
21       negligent or intentional violation of the TCPA, including each of the aforementioned  
22       provisions of 47 U.S.C. § 227, et. seq.

23

24      19. As a result of each of Defendants’ negligent violations of the TCPA, Plaintiff is  
25       entitled to an award of \$500.00 in statutory damages for each message in violation of  
26       the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

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1 20. As a result of each of Defendants' knowing and/or willful violations of the  
2 TCPA, Plaintiff is entitled to an award of treble damages in an amount up to  
3 \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. §  
4 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).  
5  
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Plaintiff prays that judgment be entered against the  
9 Defendants as follows:

- 10 A. Statutory damages of \$500.00 for each violation pursuant to 47 U.S.C. §  
11 227(b)(3)(B);  
12  
13 B. Treble damages for each violation determined to be willful or  
14 intentional pursuant to 47 U.S.C. § 227(b)(3)(C); and  
15  
16 C. Such other and further relief as may be just and proper.  
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18  
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20 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

21 DATED: April 25, 2013

22 LEMBERG & ASSOCIATES, LLC

23  
24 By: /s/ Trinette G. Kent  
25 Trinette G. Kent

26 Attorney for Plaintiff,  
27 Don Lavetter  
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